

TESTIMONY OF U.S. SENATOR ROBERT C. BYRD

ON S. 2381, THE LEGISLATIVE LINE-ITEM VETO ACT OF 2006

BEFORE THE SENATE BUDGET COMMITTEE

MAY 2, 2006

Mr. Chairman and Senator Conrad,

I very much appreciate this opportunity to present my views on S. 2381, the Legislative Line-Item Veto Act, as proposed by the president.

This is a subject I view with the gravest concern. The Senate, to its eternal shame, once before approved a Line-Item Veto that would have eviscerated the Congress's hold on the power of the purse. We are fortunate that the Supreme Court intervened to correct that egregious error. We cannot count on the Court's being willing or able to do it again.

This time around, the Congress, and more particularly the Senate, may be the first, last, and only line of defense.

S. 2381 is an offensive slap at the Congress. It embodies a reckless disregard for the fundamental and sacred Constitutional principle of three separate and coequal branches of Government.

S. 2381 is anathema to the law-making powers granted to the Congress in Article I of the Constitution. As currently drafted, it would allow the president, to roll over the procedures outlined in the presentment clause of Article I, Section 7, and effectively cancel individual tax and spending items in legislation by impounding such items indefinitely. Without exercising a veto, the president could effect the repeal of a law

passed by the Congress, and then resist subsequent effort by the Congress to ensure that law is carried into effect. S. 2381 is a thinly-veiled attempt to circumvent the Constitutional test outlined in *Clinton v. City of New York*.

S. 2381 would authorize the president, and all future presidents, to propose rescinding any item of mandatory spending, any item of discretionary budget authority, and certain “targeted tax benefits” enacted after the passage of S. 2381, if it is enacted. It would require the Congress to vote on presidential rescission requests within 13 days, without amendment.

S. 2381 would give the president complete control over the packaging and submission of rescission bills. It would empower the president to bundle hundreds of rescission proposals together, or, if he chose, to submit them individually. A president could propose to rescind funds immediately after they are enacted into law, or decades after they are enacted into law. A president could even resubmit rescissions already rejected by the Congress. As proposed, S. 2381 would prohibit Members of Congress from offering amendments to the president’s requests. The Congress could not substitute its ideas for his. Under S. 2381, Members could only vote up or down on a measure of the president’s choosing, and they would effectively have to do so at a time of the president’s choosing. This heinous proposal represents a complete and total abdication to the president of the legislative agenda with regard to rescissions.

If a Republican or Democratic president should decide to target an individual Member of Congress, this proposal would allow him to do that. The president could exert enormous pressure on individual Members by targeting their spending and targeted tax items, or he could curry favor by promising not to target those items. The president could submit and require votes on sensitive issues for Members whenever he determined that such votes would be to his political advantage. He could use this new leverage to squeeze Members. He could play election-year politics. It is a weapon that the president could use to threaten or reward, and with the threat of that Damocles sword hanging over each Member's head, he could expect to have his way on many issues.

By permitting the president to package rescission proposals as he deems appropriate, and prohibiting the Congress from amending the package, under S. 2381, Senators would be precluded from seeking a vote on individual items marked for rescission. If the president chose to send up a package containing ten rescissions, the Senate would have to vote up or down on that package as a whole. Take it or leave it. Members would be denied their right to determine whether an individual item is an appropriate use of federal funds, and whether such an item deserves a vote. In a bizarre and grotesque twist of the presentment clause, it would be the Congress that would have to accept or reject in toto a legislative package of the president's choosing, instead of the other way around.

A Senator's right to debate and amend is what protects this body as a forum for dissent.

It is in this forum, and this forum alone, that a minority of Senators can put a bridle on the majority, at least for a little while until the country can be awakened to the mistakes that might otherwise be visited upon the people. We have no idea what kind of rescissions this or any future president will submit under the expedited procedures of this bill.

Without the right to debate and amend, the Senate is inviting all future presidents to force their views and ideas – no matter how extreme – upon this institution.

Once proposed for rescission, under S. 2381, the president could impound funds for up to 180 days. That would quadruple the 45-day limit allowed for impoundments under current law. Given that the legislation simultaneously requires the Congress to act on the president's rescission proposals within 13 days of their submission, this 180-day impoundment time limit is especially menacing and pernicious. Even if the Congress disapproves of the president's rescission proposal, under S. 2381, the president is not obligated to release those funds for six months. The president could submit the same rescission proposal again and again, regardless of prior Congressional disapproval, and, thereby, impound items indefinitely. In the case of discretionary budget authority, the president could impound funds until the pertinent appropriations law expires at the end of the fiscal year, effectively eliminating funding for any discretionary items which the president chooses.

For the Fiscal Year 2006, \$445 billion of the discretionary funds appropriated by the

Congress are one-year appropriations that will expire at the end of the fiscal year. S. 2381 would allow the president, by himself, to effectively eliminate any of those funds by proposing to rescind, and then impounding them for 180 days at a time. By himself, with no legislative action whatsoever, the president could even eliminate a discretionary program supported unanimously by the Congress by simply deferring it to death. Our Constitution is based on a delicate balance of power between separate and coequal branches of Government, with the power of the purse in the hands of the people's representatives in the Congress, just as it should be. Under S. 2381, the keys to the U.S. Treasury would undeniably belong to the president, thereby eliminating the people's most effective tool to oppose a power-hungry Executive.

Last year, the president proposed terminating or reducing funding for 154 federal programs, and eliminated funding in his budget for discretionary items that were supported by both Republicans and Democrats. The Congress rejected 65 of the president's recommendations, and restored funds in the annual appropriations bills for such items as Job Corps, essential air service, and federal prison construction. Under S. 2381, the president could target those items for rescission, and impound the funding indefinitely, without regard to a Congressional thumbs-down on his rescission requests.

Under S. 2381, the president could also submit proposals to modify any item of direct spending, whether for Social Security and Medicare entitlements or veterans benefits, and

those modification proposals would have to be considered under these same expedited procedures limiting debate and prohibiting all amendments. At any point after the enactment of this Act, this or any future president could reach back and require the Congress to vote up or down, without amendments, on presidential changes to entitlement benefits which are enacted after passage of S. 2381.

Such broad authority could mean the loss of Social Security benefits. It could mean the loss of Medicare and Medicaid assistance. It could mean sweeping cuts in veterans benefits. Who knows what benefits may be targeted for rescission by a president not subject to the checks of the regular legislative process.

This legislation, with its broad authority for the president to effectively cancel spending and tax items by indefinitely impounding them, despite Congressional disapproval, is clearly unconstitutional. This legislation, with its broad authority for the president to craft legislation and then force it down the throat of Congress without modification, is a gross distortion of the law-making powers granted to the Congress in Article I. If the Congress, God forbid, were to approve this legislation as presented by the president, and cosponsored by 29 Senators, it would forever put the Congress firmly under the thumb of the president.

As every Member of this Committee knows, the legislative process requires compromise

and negotiation. Often, legislation is enacted only because of a series of cooperative agreements that hold the bill together as a package. By empowering the president to pick those agreements apart, and to modify or eliminate spending or targeted tax provisions, S. 2381 would allow the president to effectively create legislation that would probably never garner enough votes to pass the Congress. S. 2381 would fundamentally alter the legislative process forever, and make the president legislator-in-chief..

S. 2381 includes no sunset provisions – no trial period to judge whether this new impoundment and rescission power is abused. It, therefore, leaves any future president the easy recourse of vetoing an attempt by the Congress to reclaim its previous authority. Without a sunset, it could require a two-thirds vote of the Congress to override a presidential veto and repeal this law. Even the equally ill-conceived and unconstitutional 1996 Line-Item Veto Act had a ten-year sunset.

Historically, it is the Congress, and not the president, which has achieved real savings through rescissions. Since the Budget Act was passed in 1974, the Congress has proposed and enacted \$143 billion in rescissions compared to the \$76 billion proposed by the president. Since 2001, the president has not proposed a single item for rescission under Title X of the Budget Act.

This is a point that deserves our attention. President Bush has never proposed the

rescission of any funds through the current Budget and Impoundment Act processes. He has never vetoed an appropriations or direct spending bill. The Congress has approved more than half of the \$15.7 billion of the cancellations included in the president's budget submissions. In proposing changes to his rescission authority, the president cannot claim to have used his current authority to the fullest extent possible, nor has he even tried.

I caution Senators not to buy this tripe that the Administration is peddling, whereby the president's proposals are always good and the Congress's proposals are always bad. Presidents certainly enact their own earmarks, many of which may not withstand public scrutiny, while the Congress has many earmarks that are critical and valuable investments of the taxpayer's money. Let me cite just two examples. Senator Domenici initiated the Genome Mapping Project, a Congressional earmark that has resulted in extraordinary medical and scientific progress. Another Congressional earmark is now one of the most effective tools in the wars in Afghanistan and Iraq, known as the Predator Unmanned Aerial Vehicle. That program was initiated by Representative Jerry Lewis, now chairman of House Appropriations Committee.

We must not allow the president to subjugate the priorities of the Legislative Branch to those of the Executive. The president has every right to protect his interests in the legislation before the Congress. Likewise, Congress enjoys the same prerogative.

The Constitution prescribes a system of government that requires much more of the Congress than simply accepting or rejecting the president's proposals. The Framers of the Constitution developed a system of Government that has sustained the nation for centuries based upon the delicate balancing of power between the three branches. The power of the purse is the preeminent power in the Congressional arsenal. It guards against an all-powerful king. U.S. Senators serve with, and not under, any president. The Framers crafted a system that depends upon each branch defending its powers. The checks and balance come from that defense. There is no check and no balance if the Congress can be blackmailed and threatened by a Chief Executive to get his way.

The power of the purse entrusted to the Congress is the ultimate check against the tyranny of an overreaching Executive. It is the strongest bulwark of the people's liberties. If S. 2381 is passed as currently drafted, this unfortunate Congress will be remembered ignominiously as the Congress that gave away its mightiest weapon of protection for the people's liberties.

In 1832, at a public dinner in Washington, D.C., on the centennial anniversary of George Washington's birthday, Daniel Webster spoke these words:

If disastrous war should sweep our commerce from the ocean, another generation may renew it; if it exhaust our treasury, future industry may

replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again, and ripen to future harvests. It were but a trifle even if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these might be rebuilt. But who shall reconstruct the fabric of demolished government? Who shall rear again the well-proportioned columns of constitutional liberty? Who shall frame together the skillful architecture which unites national sovereignty with State rights, individual security, and public prosperity? No, if these columns fall, they will be raised not again. Like the Coliseum and the Parthenon, they will be destined to a mournful, a melancholy immortality. Bitterer tears, however, will flow over them than were ever shed over the monuments of Roman or Grecian art; for they will be the remnants of a more glorious edifice than Greece or Rome ever saw, the edifice of constitutional American liberty.

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